

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BRENDA WALL,

Plaintiff,

COMPLAINT

Jury Trial Demanded

- against -

DO & CO NY CATERING, INC., and
MICHAEL MARCZELL,

Defendants.

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Plaintiff, Brenda Wall, by and through her attorneys, LEEDS BROWN LAW, P.C., alleges upon knowledge as to herself and her own actions, and upon information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000-e, *et seq.*, the New York State Executive Law, Human Rights Law, Section 290 *et seq.*, New York City Human Rights Law, N.Y.C Admin. Code § 8-107 *et seq.*, and any other cause of action which can be inferred from the facts set forth herein.

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 1343. The supplemental jurisdiction of the Court is invoked over state causes of action pursuant to 28 U.S.C. § 1367.

3. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to this action, including the unlawful employment practices alleged herein, occurred in this district.

4. The jurisdictional prerequisites to this lawsuit have been satisfied. On January 27, 2017, Plaintiff filed a charge of discrimination with the New York State Division of Human Rights (“NYSDHR”). A copy of this charge was cross filed with the Equal Employment Opportunity Commission (“EEOC”).

5. On February 15, 2018, the NYSDHR dismissed Plaintiff’s charge of discrimination for administrative convenience. On April 10, 2018, the EEOC issued Plaintiff a right to sue letter. This action was properly instituted within 90 days of receipt of said letter.

PARTIES

6. Plaintiff, Brenda Wall (“Wall”) is a resident of Nassau County, State of New York. At all times relevant to this matter, Plaintiff was an employee of DO & CO Catering, Inc. (“DO & CO”).

7. Upon information and belief, DO & CO, at all times hereinafter mentioned, was and still is a corporation operating in the State of New York, with its principal place of business at 149-32 132st Jamaica, New York, 11430. At all relevant times, Defendant has met the definition of an “employer” and a “covered entity” under all applicable statutes.

8. Defendant Michael Marczell (“Marczell”), at all times hereinafter mentioned, was the President/General Manager of DO & CO’s New York locations. Marczell was the ultimate decision maker responsible for maintaining a discrimination free workplace.

FACTUAL BACKGROUND

9. Wall is an American born woman of Hispanic descent.

10. On March 14, 2016, Wall began working as the Human Resources Manager at DO & CO.

11. On or about March 28, 2016, Wall’s Austrian supervisor, Michael Marczell

(“Marczell”) yelled at Wall, in front of Controller, Johannes Krober and Analyst, Behnam Arefnia (both Austrian). Marczell blamed Wall for the company’s worker’s compensation insurance premium increase, even though she had been working there for less than two weeks.

12. While yelling at Wall, Marczell stated, “I hate you and all Americans, they think they don’t need to give anyone answers.”

13. In or around March or April 2016, Marczell told Wall that her salary was too high for a woman and that Americans were not like Europeans because Americans feel entitled to things and do not work for their money.

14. On or about April 4, 2016, Marczell again yelled at Wall in front of other employees because of the company’s insurance premium increased. Marczell told Wall that just because she is “attractive” does not mean she was going to get paid, and that only Europeans know what hard work is.

15. Later that day on April 4, 2016, Wall complained about Marczell’s discriminatory behavior and comments to Assistant General Manager, Christiano Ceriani (“Ceriani”). Ceriani assured Wall that he would discuss the matter with New York General Manager Tino, Wohlfarht (“Wohlfarht”).

16. Upon information and belief, no investigation was conducted into Wall’s complaints and nothing was done to rectify the matter.

17. On or around April 25, 2016, Marczell told the Director of AON, DO & Co.’s then insurance company, that he was tired of ‘Americans robbing people.’ This statement was made in front of Wall during a company meeting.

18. Wall asked Marczell to stop making negative comments about Americans. In response, Marczell announced to others, “Brenda is offended about how I feel...I guess she is like

other Americans, worthless and without a brain.”

19. Later that day, Wall complained about discrimination to Marczell and Wohlfarht, who failed to respond to Wall and instead began talking to each other in German.

20. Throughout Wall’s employment with DO & CO, Marczell frequently spoke German in front of her to other employees and reprimanded her for not listening to him even though she does not speak or understand German.

21. Furthermore, Marczell often yelled at Wall and other employees for speaking Spanish in the office and forbid them from doing so. When Wall asked Marczell why the employees could not speak Spanish to each other, he replied, “Because we need to know what Spanish people are plotting...because those are [the people] who rob from us.”

22. On June 6, 2016, Wall complained to Marczell about his discriminatory behavior toward Hispanic employees. Marczell responded, “Fix it. That is your problem. All Spanish people do is come to work drunk.” When Wall told him that she was not drunk, he replied, “Maybe you should try it.”

23. On or about June 16, 2016, Marczell said to Wall, “you have one function and that is to control accidents and to not get me sued...do your job and go make the union happy.”

24. Marczell, referring to the Union President, told Wall to, “Flirt with him, take him out to dinner, do what you need to do. Earn your salary however you know how. The expats stay here until 8:00 p.m. at night and you dirty Americans only worry about feelings and quality of life.”

25. Offended by these comments, Wall and walked away. Marczell followed Wall to her desk and stated, “We fired Damion Palmer, who was a lazy black guy, you need to fire the rest of the lazy Spanish and blacks.” This comment was witnessed by Human Resources Generalist ,

Linda Galino (“Galino”).

26. On June 22, 2016, during an operations meeting, Wall complained of hot temperatures in the logistic unit office, which resulted in many employees becoming ill.

27. In response, Marczell stated that the Spanish employees should be able to handle the heat. He then refused to discuss the matter further.

28. On or about July 1, 2016, on behalf of other employees, Wall again complained to Marczell regarding the temperature in the logistics unit office. Wall informed Marczell that the temperature in the logistics unit was more than 100 degrees, causing employees to faint and become sick. Wall further informed Marczell that two employees had to go to the hospital because of the extreme heat.

29. In response to Wall’s complaints, Marczell told Wall that it was her fault the Spanish employees were, “not under control,” and he refused to install air conditioning.

30. Shortly after her July 1 complaint, Wall complained to Marczell that the temperature in the logistics unit was intolerable and that employees were threatening to stop working.

31. In response, Marczell stated, “Until you die, you are fine. Those are *your* people, and you need to speak to them in Spanish and calm them down.” Marczell then instructed Plaintiff to hire, “the right kind of Spanish people” specifically, the “Caribbean ones, because they can withstand the heat better.”

32. On or about July 12, 2016, Wall complained to Marczell about the unsafe work conditions. Marczell replied that Wall deserved to be put out on the street. This was witnessed by Human Resources Assistant, Tresha Dookram.

33. On or about July 18, 2016, Galindo complained to Wall that the Austrian chefs

were making racist comments about having too many “blacks” in the kitchen. When Wall brought forth Galindo’s complaint to Marczell, he responded, “So what? We don’t need any lazy niggers.”

34. On or about July 25, 2016, Quality Assurance Manager, Trisha Ramdihal (“Ramdihal”) informed Plaintiff that Marczell instructed her to fix the company’s papers to make it look like they were in compliance with halal food preparation, otherwise the company would not pass the upcoming Emirate audit.

35. Following Ramdihal’s orders, Wall tried to discuss the halal food compliance issue with Marczell, who told Wall to instruct the employees to respond “no hablo Ingles” when questioned by auditors, since, according to Marczell, “Spanish people are clueless.” This conversation as witnessed by the management team, including but not limited to, Julio Mieses, Cristiano Ceriani, Sharone Hanan, Carlos Martinez, John Macias, Martin Bumberger, and Thomas Elst.

36. On or about August 5, 2016, Marczell told Wall that all Spanish people are “delinquents” and all black people are “lazy” and “dumb.”

37. On or about August 8, 2016, Marczell commented that Wall’s shoes and the shoes of her co-worker, Nidy Cerono, were “sex shoes.”

38. On or about August 17, 2016, Wall witnessed a homeless man masturbating in the building’s parking lot. Wall immediately reported the incident to Ceriani, who went outside and handled the situation.

39. Later that day, Wall learned that Marczell, Johannes Krobner, and Benham Arefnia, were laughing and telling people that Wall has sex with homeless men and that maybe she can get people to work for the company by having sex with them.

40. On or about August 22, 2016, Marczell barged into Wall’s office, yelling at Wall

that he would “kill [her]” if she looked at him the wrong way. Marczell then stormed out of Wall’s office yelling, “How the fuck can I live with myself knowing these stupid Spanish people work for me?”

41. On or about August 29, 2016, during a meeting regarding a recruitment activity report, Marczell asked Wall a question and told her that she “deserve[d] to be shot,” if she did not know the answer.

42. In response, Wall told Marczell that she could no longer handle his verbal abuse, violent threats, and discriminatory comments, and that she had to go home for the day.

43. Following this incident, Marczell was away on vacation for two weeks.

44. In or around mid-September 2016, Wall informed Marczell that there were roaches in the kitchen. Marczell replied, “So what? I don’t care about Muslims and them having to pray a hundred times or their hundred holidays. Leave me alone.”

45. In or around late-September 2016, Marczell threatened numerous Muslim employees, including Harpal Kaur, Jasvir Kaur, Kamaljit Kaur, Navdeep Kaur, and Sukhjinder Haur, with termination if they continued to wear religious bracelets to work.

46. On or about September 28, 2016, Marczell instructed Plaintiff to hire an Austrian person for a job because the position dealt with pricing information and he did not trust an American to do it. When Plaintiff complained that this was offensive, he responded, “You do what I tell you or I throw you back on the street.”

47. As a result of the aforementioned conduct and comments, Plaintiff suffered and continues to suffer actual damages, including monetary damages, damages to her reputation and career, mental anguish, pain, and suffering, as well as physical harm.

48. On October 6, 2016, Plaintiff resigned from her position because the conditions at

DO & CO had become intolerable. As such, her resignation was tantamount to a constructive discharge.

CLAIMS FOR RELIEF

49. As described above, Defendant DO & CO subjected Wall to a hostile work environment and adverse employment actions based on her race, national origin, gender, and retaliatory animus in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*, New York State Human Rights Law, N.Y. Exec. Law §290 *et seq.*, and New York City Human Rights Law, N.Y.C Admin. Code § 8-107.

50. As described above, Defendant, Michael Marczell, aided and abetted these actions by subjecting Wall to a hostile work environment and adverse employment actions based on her race, national origin, gender, and retaliatory animus in violation of New York State Human Rights Law, N.Y. Exec. Law §290 *et seq.* and New York City Human Rights Law, N.Y.C Admin. Code § 8-107 *et seq.*

WHEREFORE, Plaintiff demands judgment for compensatory, emotional, physical, and punitive damages (where applicable), as well as lost pay, front pay, interest, and any other damages permitted by law. Plaintiff also demands judgment against defendants for each cause action and for all applicable and permissible damages, in an amount to be assessed at the time of trial. Plaintiff further demands all attorneys' fees, disbursements and other costs and all further relief, equitable or otherwise, to which Plaintiff is entitled and/or which the court deems just and proper.

Dated: Carle Place, New York
June 27, 2018

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/s/
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